

JR76 Case Report

What are the facts of this case?

The woman at the centre of the case is known only as 'JR76'. In 2013 she obtained abortion pills for her then-15-year-old daughter online. Given the age of the daughter, she was not legally capable of consenting to sex. She was pregnant as a result of a sexual relationship with an older boy who became abusive, threatening to *'kick the baby out of her and stab it if it was born'*. She wanted to sit her GCSEs, continue her education and go to university, and didn't feel that she could go through with travelling to England for a legal termination.

After taking the pills obtained by her mother, she attended a GP for aftercare. The Police Service of Northern Ireland (PSNI) was notified and seized the daughter's medical records without her, or her mother's consent. JR76 was subsequently charged with procuring and supplying poison with the intent to cause a miscarriage by the Public Prosecution Service of NI (PPS) under the Offences Against the Person Act 1861.

JR76 is taking judicial review of the decision to prosecute her. Judicial review is a process in which a judge reviews the legality of a decision made by a public body – here, the PPS. The PPS must exercise discretion in deciding whether a prosecution should be brought where criminal activity is suspected, and should only prosecute in instances where it is in the public interest.

Is abortion legal in Northern Ireland?

No. Abortion is illegal in Northern Ireland except where a threat to the life, or a risk of permanent and serious harm to an individual's health exists as a result of the pregnancy. In all other cases it is a criminal offence and carries a sentence of up to life imprisonment.

The legislation in question is the Offences Against the Person Act 1861. In the rest of the UK, the Abortion Act 1967 makes exceptions to the 1861 Act if certain conditions are met, but the 1967 Act has never been extended to Northern Ireland. BPAS is currently campaigning for the decriminalisation of abortion across the UK, which would mean that the prospect of prison for women and their care providers would no longer exist.

The Police Service of Northern Ireland (PSNI) carries out raids of premises where it suspects abortion pills to be located and seizes packets of pills it uncovers. Several individuals have been prosecuted in the last few years for taking abortion pills in Northern Ireland, including a 19-year-old woman who was reported to the police by a flatmate in 2016, and a man and woman who accepted formal cautions in 2017 for supplying, and using a poison to procure a miscarriage, respectively.

How is BPAS involved in this case?

BPAS is involved as an ‘intervener’ in the case. Normally the only individuals involved in a court case will be the parties that are directly involved in the disputed conduct – here, JR76 herself and the PPS of Northern Ireland. In cases that involve important questions of public interest, the court will allow other organisations to join the proceedings as interveners in order to lend their expertise to the court in determining the issues at hand.

BPAS provides abortion consultation and care to nearly 80,000 women annually, including women from Northern Ireland. Since 2016 BPAS has operated a ‘hotline’ to assist Northern Irish women who have ended pregnancies using pills sourced from the two principle not-for-profit online suppliers, Women on Web and Women Help Women.

What important issues are raised by this case?

Promoting safe abortion: Women should have access to safe, legal abortion. Prosecuting women for pursuing safe abortion methods is regressive and risks the health of women generally. The drugs involved in a medical abortion, mifepristone and misoprostol, are peer-reviewed as safe and appear on the WHO’s Model List of Essential Medicines. They are a safe alternative to backstreet abortions by dangerous and desperate means.

International human rights law: International human rights standards require that safe provision be made for abortion and hold that the criminalisation of abortion is a breach of human rights law. Prosecutors are required to consider international human rights standards when making the decision to pursue a prosecution or not. This prosecution disregards the steady and consistent support for safe, legal abortion by numerous human rights bodies in a manner that discriminates against women.

Medical confidentiality and trust in practitioners: Patients and the public at large deserve to have trust in the medical professionals who treat them. JR76 was referred to the police by individuals involved in the aftercare provided to her daughter. This undermines the trust that individuals can have in their doctors, and may deter individuals from seeking medical care in instances where they do need it after having a medical abortion. In the very small number of cases where a woman suffers a haemorrhage after a medical abortion, the inability to access trusted aftercare may lead to the loss of her life. This prosecution also raises serious concerns that doctors and counsellors could be required to hand over sensitive medical records. Patients may fear reaching out for support, counselling and advice to organisations like BPAS if they are concerned they may be prosecuted if they reveal they have had an abortion.

What happens next?

The judicial review hearing is due to take place at the end of September. If JR76 is successful in challenging the decision to prosecute her, the court will quash the decision to prosecute her and direct the PPS to reconsider their position. This would also likely affect how the PPS conduct

themselves in considering prosecutions for others who may find themselves in JR76's position in the future.

More information on BPAS' work in relation to securing abortion rights for women in Northern Ireland can be found here: <https://www.bpas.org/get-involved/northern-ireland-campaign/>.